Pay Equity Audits: The Québec Court of Appeal Renders its Decision

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On October 12, 2016, the Québec Court of Appeal rendered an important decision dealing with pay equity,[1] confirming the decision rendered on January 22, 2014 by the Honourable Édouard Martin of the Superior Court invalidating sections 76.3 and 76.5 of the *Pay Equity Act*[2] (hereinafter, the "**Act**") governing pay equity audits and the payment of salary adjustments.

In fact, since 2009, the Act requires that employers review their pay equity programs once every five years. However, it does not provide for retroactive payments if salary adjustments would otherwise be payable following such a review. Accordingly, employers do not compensate differences in wages that individuals who occupy positions in predominantly female job classes may have experienced during the five years preceding the audit. Furthermore, the posting of the results of the audit do not include the information necessary for employees to enforce their rights.

The Court of Appeal ruled that these provisions of the Act are discriminatory and in violation of the *Canadian Charter of Rights and Freedoms* and the *Charter of Human Rights and Freedoms* given that they allow for the perpetuation of the inequality women in the workplace may have suffered prior to the audit by not retroactively compensating such inequality. Indeed, according to the Court of Appeal, the Act in its current form essentially permits the discrimination of employees in respect of their salary for a period of up to five years.

In accordance with this decision, the Québec Government is required to make legislative amendments no later than next year and during that year long period, the existing provisions will continue to apply. Should the Government fail to amend the legislation in time, sections 76.3 and 76.5 will become inoperative.

The Québec Government has 60 days to seek leave to appeal this decision before the Supreme Court of Canada. It will undoubtedly be important to closely follow this matter.

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1. *Québec (Procureure générale)* c. *Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2016 QCCA 1659.

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2. CQLR, c. E-12.001.

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